Supreme Court, U.S.
FILED

051241 MAR 2 - 2006

OFFICE OF THE CLERK

NO. ____

IN THE
SUPREME COURT OF THE UNITED STATES

BRYAN LEE WALTER,

Petitioner,

v.

COMMISSION FOR LAWYER DISCIPLINE,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF TEXAS AND THE COURT OF APPEALS OF THE FIFTH DISTRICT OF TEXAS

PETITION FOR A WRIT OF CERTIORARI

BRYAN LEE WALTER
1001-G WEST Northwest Hwy
Grapevine, TX 76051
817-263-5297

NO. _____

IN THE
SUPREME COURT OF THE UNITED STATES

BRYAN LEE WALTER,

Petitioner,
v.

COMMISSION FOR LAWYER DISCIPLINE,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF TEXAS AND THE COURT OF APPEALS OF THE FIFTH DISTRICT OF TEXAS

PETITION FOR A WRIT OF CERTIORARI

BRYAN LEE WALTER
1001-G WEST Northwest Hwy
Grapevine, TX 76051
817-263-5297

QUESTIONS PRESENTED

a. Whether the Texas Rules of Disciplinary Procedure were constructed overbroad and unconstitutionally vague, and their application in obtaining a judgement against Walter violates U.S. Const. art. VI; U.S. Const. amends. I, V, and XIV; Tex. Const. art. I §§ 1, 8, 19, and 29;

b. Whether the trial court's use of a Trial Amendment and Second Amendment filed after close of evidence and conclusion of trial to make a finding and judgment violates U.S. Const. art. VI; U.S. Const. amends. V, and XIV; Tex. Const. art. I §§ 1, 19, and 29, and Tex. Const. art. XVI § 1(a); Texas Rules of Civil Procedure Rules 63, 66, 67, 262, 269(a), 270, 275, 277, 279, 300, and 301, Texas Rules of Disciplinary Procedure Rules 3.01. 3.05, 3.08. 3.09, 3.10, Texas Disciplinary Rules of Professional Conduct, and the Due Process Clause;

c. Whether the trial court, in making findings without the application of the "rule of reason," and the subsequent judgment based upon those findings, a violation of U.S. Const. art. VI; U.S. Const. amends. V, and XIV; Tex. Const. art. I §§ 1, 19, and 29, and Tex. Const. art. XVI § 1(a), the Texas Rules of Civil Procedure, the Texas Rules of Disciplinary Procedure, Texas Disciplinary Rules of Professional Conduct, and the Due Process Clause;

d. Whether the trial court, in making findings without the application of the "rule of reason," and the subsequent judgment violates U.S. Const. art. VI; U.S. Const. amends. I, V, and XIV; Tex. Const. art. I §§ 1, 19, and 29, and Tex. Const. art. XVI § 1(a); Texas Disciplinary

Rules of Professional Conduct Preamble:Scope, and the Due Process Clause;

e. Whether the trial court, in making findings and judgment Walter not supported by evidence violates U.S. Const. art. VI; U.S. Const. amends. I, V, and XIV; Tex. Const. art. I §§ 1, 19, and 29, and Tex. Const. art. XVI § 1(a), the Texas Rules of Civil Procedure, the Texas Rules of Disciplinary Procedure, Texas Disciplinary Rules of Professional Conduct, and the Due Process Clause;

f. Whether the apellate court's review of the trial court's use of a Trial Amendment and Second Amendment filed after close of evidence and conclusion of trial to make a finding and judgment violates U.S. Const. art. VI; U.S. Const. amends. V, and XIV; Tex. Const. art. I §§ 1, 19, and 29, and Tex. Const. art. XVI § 1(a); Texas Rules of Civil Procedure Rules 63, 66, 67, 262, 269(a), 270, 275, 277, 279, 300, and 301, Texas Rules of Disciplinary Procedure Rules 3.01. 3.05, 3.08. 3.09, 3.10, Texas Disciplinary Rules of Professional Conduct, and the Due Process Clause;

g. Whether the apellate court's review of the trial court, in making findings without the application of the "rule of reason," and the subsequent judgment based upon those findings, a violation of U.S. Const. art. VI; U.S. Const. amends. V, and XIV; Tex. Const. art. I §§ 1, 19, and 29, and Tex. Const. art. XVI § 1(a), the Texas Rules of Civil Procedure, the Texas Rules of Disciplinary Procedure, Texas Disciplinary Rules of Professional Conduct, and the Due Process Clause;

h. Whether the apellate court's review of the trial court, in making findings without the application of the "rule of reason," and the subsequent judgment violates U.S. Const. art. VI; U.S. Const. amends. I, V, and XIV; Tex. Const. art. I §§ 1, 19, and 29, and Tex. Const. art. XVI § 1(a); Texas Disciplinary Rules of Professional Conduct Preamble:Scope, and the Due Process Clause;

i. Whether the apellate court's review of the trial court, in making findings and judgment Walter not supported by evidence violates U.S. Const. art. VI; U.S. Const. amends. I, V, and XIV; Tex. Const. art. I §§ 1, 19, and 29, and Tex. Const. art. XVI § 1(a), the Texas Rules of Civil Procedure, the Texas Rules of Disciplinary Procedure, Texas Disciplinary Rules of Professional Conduct, and the Due Process Clause; and

j. Whether the state supreme court'court's review of the trial court's use of a Trial Amendment and Second Amendment filed after close of evidence and conclusion of trial to make a finding and judgment violates U.S. Const. art. VI; U.S. Const. amends. V, and XIV; Tex. Const. art. I §§ 1, 19, and 29, and Tex. Const. art. XVI § 1(a); Texas Rules of Civil Procedure Rules 63, 66, 67, 262, 269(a), 270, 275, 277, 279, 300, and 301, Texas Rules of Disciplinary Procedure Rules 3.01. 3.05, 3.08. 3.09, 3.10, Texas Disciplinary Rules of Professional Conduct, and the Due Process Clause;

k. Whether Texas Disciplinary Rules of Professional Conduct Rules 8.04(a)(3) violates U.S. Const. art. VI; U.S. Const. amends. I, V, and XIV; Tex. Const. art. I §§ 1, 8, 19, and 29, and the Due Process Clause in that it seeks to affect the personal freedoms of an attorney acting outside the scope of an attorney acting as an

attorney. The application of Rule 8.04(a)(3) to grant a judgment against Walter is a denial of his rights to due process. DR 8.04(a)(3) should not be applied against Walter regarding Walter's family law case when Walter was not acting in the capacity of the attorney in the case.

PARTIES

The parties to the proceeding below were:

Petitioner: Bryan Lee Walter. Petitioner was aligned as respondent/appellant below.

Respondent: Commission for Lawyer Discipline. Respondent was aligned as petitioner/appellee below.

TABLE OF CONTENTS

PETITION FOR A WRIT OF CERTORARI 1

OPINIONS BELOW 1

JURISDICTION 1

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED 1

STATEMENT 3

A. Trial Court Proceeding 4

B. Apellate Proceeding 6

C. State Supreme Court Proceeding 6

UNIQUENESS OF DISCIPLINARY PROCEEDINGS ... 7

DUE PROCESS VIOLATIONS 7

A. Procedural Violations of Fair Trial 7

B. Failure to Comply with Texas Rules of Disciplinary Procedure Rule 3.01 Violated Due Process 8

C. The State Proceedings Permitting Trial Amendments Violated Texas Rules of Civil Procedure Rules 63, 66, 67, 269(a), 270, 275, 277, 279, 300, and 301 17

D. Void-for-Vagueness Construction of Texas Disciplinary Rules of Professional Conduct Rules 4.01(a) and 8.04(a) Violated Due Process 24

REASONS FOR GRANTING THE PETITION 27

A. The 5th District and Supreme Court of Texas' Decision Directly Conflicts with a Decision of the United States Supreme Court 27

B. The Questions Presented Have Significance Beyond the State of Texas 29

CONCLUSION 30

TABLE OF AUTHORITIES

Cases

FEDERAL CASES

Almand v. DeKalb Cty., 103 F.3d 1510, 1514 (11th Cir. 1997)

American Fed. Group, Ltd. v. Rothenberg, 136 F.3d 897, 905 (2d Cir. 1998)

Atchinson v. District of Columbia, 73 F.3d 418, 426 (D.C. Cir. 1996)

CSC v. Letter Carriers, 413 U.S. 548 (1973)

Cinton v. Union Pac. R.R., 813 F.2d 917 (9th Cir. 1987)

Connally v. General Constr. Co., 269 U.S. 385 (1926)

Consolidated Data Terminals v. Applied Digital Data Sys. Inc., 708 F.2d 385 (9th Cir. 1983)

DCPB, Inc. v. City of Lebanon, 957 F.2d 913 (1st Cir. 1992)

Diersen v. Chicago Car Exch., 110 F.3d 481, 489 (7th Cir. 1997) (noting that prolonging litigation by permitting postjudgment amendment would impair public interest in

Deakyne v. Commissioners of Lewes, 416 F.2d 290 (3d Cir. 1969)

Domar Ocean Transp., Ltd. v. Independent Ref. Co., 783 F.2d 1185 (5th Cir. 1986)

Douglas v. Owens, 50 F.3d 1226, 1236-37 (3d Cir. 1995)

Douglas, 50 F.3d at 1235-36

Dowling v. United States, 493 U.S. 342 (1990)

Fisher v. Roberts, 125 F.3d 974, 977 (6th Cir. 1997)

Fisher, 70 F.3d at 1449

Foman v. Davis, 371 U.S. 178, 83 S. Ct. 227 (1962)

Hunt v. Baldwin, 68 S.W.3d 117, 134-35 (Tex.App.--Houston [14th Dist.] 2001, no pet.) (record must reflect that written trial amendment was offered)

Ideal Elec. Sec., 81 F.3d at 245-47

Johnson, 629 F.2d at 294-95

Jones & Jones, 22 F.3d at 400

Kim v. Nash Finch Co., 123 F.3d 1046, 1064 (8th Cir. 1997)

Lawrence v. Texas, 539 U.S. 558, Texas Disciplinary Rules of Professional Conduct Rules 4.01 and 8.04(a)

Maldonado v. Dominguez, 137 F.3d 1, 11 (1st Cir. 1998) (revision of complaint would be futile)

Modern Elec., 81 F.3d at 247

Northern Sec. Co. v. United States, 193 U.S. 197 (1904)

Orix Credit Alliance, 125 F.3d at 480

Orix Credit Alliance v. Taylor Mach. W
125 F.3d 468, 480-81 (7th Cir. 1997)

Rios v. Bigler, 67 F.3d 1543, 1549 (10th Cir. 1995)

Roland M. v. Concord Sch. Comm., 910 F.2d 983 (1st Cir. 1990)

In Re Ruffalo, 390 U.S. 544 (1968)

Security Ins. Co. v. Kevin Tucker & Assocs., 64 F.3d 1001, 1008 (6th Cir. 1995)

Sparrow v. Heller, 116 F.3d 204, 205 (7th Cir. 1997)

Swierkiewicz, 534 U.S. at 513

Triad Elec. & Controls, Inc. v. Power Sys. Eng'g, Inc., 117 F.3d 180, 192 (5th Cir. 1997);

U.S. v. Ideal Elec. Sec. Co., 81 F.3d 240, 247 (D.C. Cir. 1996)

Winger v. Winger, 82 F.3d 140, 144 (7th Cir. 1996)

Yamaguchi v. U.S. Dept. of the Air Force, 109 F.3d 1475, 1480-81 (9th Cir. 1997) (dismissal for failure to state a claim)

STATE CASES

2005 Tex. App. LEXIS 3432

Anderson, 902 S.W.2d at 700

Boyles v. Kerr, 855 S.W.2d 593 (Tex.1993)

Burroughs Corp. v. Farmers Dairies, 538 S.W.2d 809 (Tex.App.--El Paso 1976, writ ref d n.r.e.)

Burroughs Corp. v. Farmers Dairies, 538 S.W.2d 809 (Tex.App.--El Paso 1976, writ ref d n.r.e.)

Chapin, 844 S.W.2d at 665

City of Fort Worth v. Zimlich, 29 S.W.3d 62, 73 (Tex. 2000) (must be in writing)

Commission for Lawyer Discipline v. Benton, 980 S.W.2d 425 (Tex. 1998)

Crain v. San Jacinto Sav. Ass'n, 781 S.W.2d 638 (Tex.App.--Houston [14th Sist.] 1989, writ dism'd)

Daniels v. State, 754 S.W.2d 214 (Tex. Crim. App. 1988)

Ely v. State, 582 S.W.2d 416 (Tex. Crim. App. 1979)

Erisman v. Thompson, 167 S.W.2d 731 (Tex. 1943)

Floyd v. State, 575 S.W.2d 21 (Tex. Crim. App. 1978)

Hardin v. Hardin, 597 S.W.2d 347 (Tex.1980)

Harrison v. City of San Antonio, 695 S.W.2d 271 (Tex.App.--San Antonio 1985, no writ)

Howell v. State, 559 S.W.2d 432 (Tex. Civ. App. -- Tyler 1977, writ refd n.r.e.)